

CHAPTER 5. CONTRACTOR DEBT COLLECTION

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CHAPTER 5. CONTRACTOR DEBT COLLECTION

5.1 OVERVIEW.

- 5.1.1 This chapter addresses NASA's policy related to the collection of debts owed to NASA by its contractors. Such debt shall be promptly and aggressively collected, with follow-up action(s) taken as necessary, to recover outstanding debts. This chapter issues policy for the collection and recovery of those debts that are owed by contractors, vendors, assignees, and business entities, and the transfer of eligible delinquent debts to the Department of Treasury (Treasury) for collection and cross-servicing.

5.2 POLICY.

- 5.2.1 NASA's policy is to collect debts owed to the Agency. Uncollectible eligible debts of up to 180 days delinquent shall be transferred to the Treasury as soon as a determination is made despite the Agency's due diligence to recover debts, additional efforts will not result in the recovery of these debts. Referral of debts to the Treasury shall be made in accordance with terms of agreement between NASA and the Treasury.

5.3 AUTHORITES AND REFERENCES.

- 5.3.1 Debt Collection Improvement Act of 1996, Public Law 104-134, and the revised Federal Claims Collection Standards regulation of 2000, this law centralized the government-wide collection of delinquent debt and gave Treasury significant new responsibilities in this area. The Financial Management Service (FMS) is responsible for Treasury's implementation of the debt collection provisions of the Debt Collection Improvement Act.
- 5.3.2 The Federal Claims Collection Standards (FCCS). The FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, unless specific agency statutes or regulations apply to such activities or, as provided for by U.S.C. Title 11 when the claims involve bankruptcy.
- 5.3.3 31 Code of Federal Regulations (CFR) Part 901.3, "Collections by Administrative Offset." These provisions implement the statutory requirement for mandatory referrals of eligible debts to the Treasury.
- 5.3.4 28 U.S.C. § 2415. Time for Commencing Actions Brought by the United States (file within six years.)
- 5.3.5 Federal Acquisition Regulations (FAR), Part 33.102(b). Regulation prescribe contracting officers to consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the Government Accountability Office.

- 5.3.6 Treasury Financial Management Regulations (TFM) Chapter 6-8000. This chapter establishes procedures for Government agencies to follow to ensure prudent cash management practices when developing and implementing regulations, systems, and instructions.

5.4 ROLES AND RESPONSIBILITIES.

5.4.1 NASA Agency Office of the Chief Financial Officer (OCFO) shall:

- A. Establish and maintain policies for the timely collection of contractor debt in accordance with applicable laws and Treasury Guidance.

5.4.2 The Assistant Administrator for Procurement shall:

- A. Establish and maintain contractual policies for the timely identification of amounts owed by contractors, and issuance of demand letter for repayment.
- B. Monitor compliance with contractor debt collection policies and procedures.

5.4.3 NASA Shared Services Center (NSSC) shall:

- A. Identify amounts owed by contractors.
- B. Prepare and issue demand letters to contractors.
- C. Provide a copy of the demand letter and any associated documentation to the Center OCFO upon request.
- D. Record accounts receivable based on demand letters.
- E. Maintain records of receivables and take appropriate follow-up action on delinquent receivables.

5.4.4 Center Contracting Officers shall:

- A. Identify amounts owed by contractors and notify the NSSC.

5.5 DEFINITIONS.

- 5.5.1 Cross-Servicing. The process whereby federal agencies refer delinquent debts to Treasury for collection.

- 5.5.2 Debt and Claim. The terms, “debt” and “claim,” as used in this chapter are synonymous and interchangeable. They refer to any amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency.

- 5.5.3 Debt Collection Center -Private collection agency. A private sector company specializing in the collection of delinquent debt. A listing of agencies awarded debt collection contracts by Treasury is provided on <http://fms.treas.gov/debt/pca.html>.
- 5.5.4 Debts Eligible for Cross-Servicing. Debts eligible for cross-servicing by Treasury include all debts that are eligible for transfer to Treasury except debt that is:
- A. In bankruptcy;
 - B. Owed to Federal agencies of foreign governments;
 - C. In an administrative appeals process; and
 - D. In foreclosure.
- 5.5.5 Debts Eligible for Transfer (or mandatory referral). Debts “eligible for transfer to the Treasury” include debts, except as defined below, that have been delinquent for a period up to 180 days for which the Treasury may take appropriate action to service, collect, or compromise the debt or to suspend or terminate collection action.
- 5.5.6 Debts Not Eligible for Transfer (or mandatory referral). Debts that are “not eligible for transfer to the Treasury” includes debt:
- A. In litigation or foreclosure.
 - B. To be disposed of under an approved asset sale program.
 - C. Referred to a private collection contractor for a period of time acceptable to the Treasury.
 - D. At a debt collection center for a period of time acceptable by the Treasury.
 - E. Will be collected under internal offset procedures within 3 years after the debt first became delinquent.
 - F. May be deemed exempt by the Treasury in accordance with 31 CFR 285.12 based on a determination that the exemption is in the best interest of the United States.
- 5.5.7 Delinquent Debt. Delinquent debt refers to a debt that has not been paid by the due date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement).
- 5.5.8 Treasury Offset Program (TOP). A centralized offset program, administered by the Financial Management Service’s (FMS) Debt Management Services (DMS), and designed to collect delinquent debt owed to federal government

agencies and states. A Treasury disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed.

5.6 DEBT DETERMINATION AND COLLECTION.

- 5.6.1 Debt Collection Initiated by the Contracting Officer. When indication of a contract debt arises due to causes as determined by FAR 32.602, the contracting officer shall determine promptly whether an actual debt is due to the Government and the amount. When a debt is determined due, the contracting officer will provide at a minimum the following information to the NSSC.
- A. The name and address of the contractor.
 - B. The contract number, if any.
 - C. A description of the debt.
 - D. The amount of debt and the appropriation to be credited.
 - E. The date the debt was determined.
- 5.6.2 The Contractor Officer shall keep the NSSC aware of all notices issued or received that affect the NASA's accounting records. Communication of the foregoing activity shall be performed in the accounting month that the activity occurred. These actions will ensure that receivables are established, aged, collected and written-off in the accounting records and identified in reports.
- 5.6.3 Collection. The primary responsibility for determining the amount and ensuring collection of contract debt is with the NSSC, for most types of contract debts. It is the NSSC's responsibility to initiate action to make the collection from the contractor. The NSSC shall act judiciously to make recovery of debt upon receipt of an official request, including payment dates, amounts due to the contractor, and provision of a copy of the contract from the contracting officer or other authorized official. Any checks from contractors for the payment of debt should be immediately sent to the NSSC with a request for confirmation of receipt of payment.
- 5.6.4 Demand for Payment. Written demand for repayment of debts shall be made promptly, and in terms that inform the debtor of the consequences of failing to cooperate with NASA to resolve the indebtedness. Priority shall be given first to voluntary repayment prior to initiating involuntary measures for recovery of debts. Repayment measures include one or more of the following activities: internal debt recovery processes by NASA (through installment agreements and internal administrative offsets), and/or transfer to the Treasury for cross-servicing. Transfer of debts to the Department of Justice for litigation also may be required. NSSC shall follow the procedures established in 14 CFR 1261.407 in making demands for payment.

- 5.6.5 Internal Administrative Offsets. Recover debts internally within NASA, to the extent practicable, by voluntary repayment of the debt by the debtor or by administrative offset(s) of other payments owed to the contractor. The contractor shall be required to liquidate debts either by payment in a lump sum on demand, or by credit against unpaid bills due the contractor, unless an installment agreement has been entered into or a deferment of collection has been approved (see FAR 32.606(d)). After 30 days have elapsed since the initial demand letter was mailed and no payment has been received, offset the amount of a contractor's indebtedness against other monies that are owed the contractor.
- 5.6.6 Offset as a Deduction on a Public Voucher. FAR subpart 32.611 allows for offsetting contractor payments to liquidate debts owed by the contractor if an explanation is given to the contractor. Offsets (that include appropriate administrative charges) shall be made against the same contract that gave rise to the debt, provided that payments are scheduled under that contract. Effect offsets against amounts due the contractor under other contracts only when offsets against the contract that gave rise to the debt cannot be accomplished. The public voucher must be approved and the accounting classification charged for the total amount being settled with no regard for the deduction being applied.
- 5.6.7 Credit Memoranda. The demand letter shall indicate that a credit memorandum is not an acceptable means for liquidating indebtedness; however, as an exception, a credit memorandum may be accepted under special circumstances and only when there is a payable invoice to which the credit can be applied. For example, a credit memorandum may be acceptable when a contractor is the original discoverer of the error that led to the indebtedness and voluntarily submits a credit memorandum to the disbursing office without having received a demand letter. The contractor should furnish the disbursing office, upon request, an invoice number, date, and the amount of the debt to be offset against the invoice, according to the credit memorandum.
- 5.6.8 Payment Schedule. Whenever possible, payment, including deferred payment, of debts owed the government by contractors shall be made in one lump sum amount. When a debtor contractor is able to establish sufficient justification, a series of installment payments may be approved that will ensure liquidation of the debt within a reasonable period of time. According to 31 CFR 901.8, when feasible, installment payments should be sufficient in size and frequency to liquidate the government's claim within 3 years. Interest and administrative fees shall be computed and assessed for each payment of outstanding debt.
- 5.6.9 Deferments and Disputes under the Contract Disputes Act. Under the Contract Disputes Act of 1978, a contractor may appeal a decision of indebtedness to the Armed Services Board of Contract Appeals or through the United States court system. The contractor may request, in writing, for a deferment of debt payment until the appeal is decided (see FAR subpart 32.613). Although a contractor may use the term "deferment" when

requesting postponement of a payment, a contractor's request for a deferment for collection of indebtedness on a contract associated with an appeal should be sent to the contract financing office by certified mail, within 3 work days from the date of receipt of that request (see FAR subpart 32.613). The accounting office cannot approve or deny such a request for a deferment. When a disbursing office or the accounting office receives a request for deferment of a debt from a contractor in association with an appeal, the office receiving the request shall send the request within 3 work days to the appropriate contract financing office.

- 5.6.10 The Current Value of Funds Rate (CVFR) is used to calculate interest on overdue Federal Government receivables (per I TFM 6-8040.40) on contract payments. Interest charged is simple interest at the rate in effect at the time the debt becomes overdue. The rate of interest remains fixed for the duration of the indebtedness (per I TFM 6-8025.20). See Treasury's Financial Management Regulations (TFM) Chapter 6-8000 for more information.
- 5.6.11 Bankruptcy. In accordance with the FAR subpart 52.242-13 titled, "Bankruptcy," should the contractor enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification should including: date on which bankruptcy petition was filed, identity of court in which the bankruptcy petition was filed, listing of government contract numbers and contracting officers for all government contracts with this contractor against which final payment has not been made, FAR clause 52.242-13 states that this obligation remains in effect until final payment under the contract(s) is made.
- 5.6.12 Penalty Charges. Creditor organizations (i.e., organizations to which a debt is owed) shall assess a penalty charge of 6 percent per annum on any debt principal that is delinquent beyond 90 days. Penalty charges shall accrue from the date the principal amount owed becomes delinquent. Amounts received from a contractor or business entity are to be deposited in the Treasury Receipt Account 1099, "Fines, Penalties, and Forfeitures, Not Otherwise Classified."
- 5.6.13 Administrative Costs. Administrative costs relate to only delinquent debts (i.e., debts not paid for 30 or more days from the date the demand letter was mailed). Administrative costs are assessed to cover expenses incurred in the recovery of the delinquent debts. The cost of sending an initial demand letter would not be included when calculating administrative costs because that expense is incurred whether or not the debt becomes delinquent. In contrast, costs associated with the calculation of interest and forwarding of the debt to the accounting office are necessitated only because the debt is not paid when due (i.e., within 30 days after the date from which the notice is mailed when interest accrues) and subsequently becomes delinquent. Therefore, costs associated with these actions are included in the calculation of administrative

costs. Administrative charges must be based on actual costs, or on an average based on actual costs. The costs may be established arbitrarily.